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*Attorneys for Defendants C. R. Bard, Inc. and  
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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products  
Liability Litigation,

No. 2:15-MD-02641-DGC

**THE PARTIES' JOINT REPORT  
REGARDING TRACK 3 CASES IN  
WHICH SUBJECT MATTER  
JURISDICTION DOES NOT EXIST**

1 As requested by the Court in a docket entry dated August 8, 2019 (Doc. 19881), the  
 2 parties submit this joint report stating their views as to what should be done with Track 3  
 3 cases that lack subject matter jurisdiction.

#### 4 **I. PLAINTIFFS' POSITION**

5 The Plaintiff Executive Committee has notified counsel identified in Exhibit J of the  
 6 Court's desire to address the jurisdictional issues. Responses for those attorneys who have  
 7 responded are included in the version of Exhibit J attached to this report. Generally  
 8 speaking, those attorneys responding have indicated that they wish to either re-file their  
 9 cases in New Jersey or Arizona state court. Counsel in some cases are seeking dismissal of  
 10 C.R. Bard such that diversity jurisdiction would remain available in the District of New  
 11 Jersey. While some attorneys who have responded do not agree (at least at this time) to  
 12 voluntary dismissal of their clients' actions, it is all Plaintiffs' counsel's understanding that  
 13 dismissal of the Exhibit J cases would necessarily be without prejudice.

#### 14 **II. DEFENDANTS' POSITION**

15 In the Track 3 cases previously identified as lacking subject matter jurisdiction (Doc.  
 16 19798-10), or subsequently identified in the September 3, 2019 joint report (Doc. 20042)  
 17 as also lacking jurisdiction, the plaintiff is domiciled in either Arizona or New Jersey. In  
 18 turn, C. R. Bard, Inc. is a citizen of New Jersey, and Bard Peripheral Vascular, Inc. is a  
 19 citizen of Arizona. Hence, in those cases, diversity of jurisdiction does not exist. See 28  
 20 U.S.C. sec. 1332. As diversity is the only basis for subject matter jurisdiction in this case,  
 21 the cases should be dismissed. *Allstate Ins. Co. v. Hughes*, 358 F.3d 1089, 1095 (9th  
 22 Cir.2004) ("In the absence of diversity of citizenship of the real parties in interest, the  
 23 district court did not have subject matter jurisdiction and should have dismissed the  
 24 action."); *accord Bernal v. Comerica Bank*, No. CV 10-04631 MMM (FMO, 2010 WL  
 25 3037259, at \*3 (C.D. Cal. July 30, 2010) ("Absent a showing by plaintiffs that there is  
 26 complete diversity of citizenship between the parties, the action must be dismissed for lack  
 27 of subject matter jurisdiction."); *see also* Fed. R. Civ. P. 12(h)(3) ("If the court determines  
 28 at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

1           **III. VOLLICK, DUKES, and FULLER CASES**

2           The Court's August 8th docket entry (Doc. 19881) also sought clarification  
3 concerning these three cases. In each of those cases, however, the plaintiff is domiciled in  
4 a state other than New Jersey or Arizona. Specifically, the plaintiff in Vollick is a citizen  
5 of Nevada; the plaintiff in Dukes is a citizen of Virginia; and the plaintiff in Fuller is a  
6 citizen of New York. As a result, diversity of citizenship exists in all three of those cases,  
7 and subject matter jurisdiction is proper. See 28 U.S.C. sec. 1332.

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Respectfully submitted, this 6<sup>th</sup> day of September, 2019.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on September 6, 2019, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

/s/ Richard B. North